

Exhibit E

EXHIBIT 3

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

MISTY BLANCHETTE PORTER,)
M.D.,)
)
 Plaintiff,)
)
 v.)
)
 DARTMOUTH-HITCHCOCK)
 MEDICAL CENTER,)
 DARTMOUTH-HITCHCOCK)
 CLINIC, MARY HITCHCOCK)
 MEMORIAL HOSPITAL, and)
 DARTMOUTH-HITCHCOCK)
 HEALTH,)
)
 Defendants.)

Docket No. 5:17-cv-194

**DECLARATION OF MICHELLE RUSSELL, M.D., IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I, Michelle Russell, M.D., do hereby depose and state as follows under oath:

1. I am currently employed by Dartmouth-Hitchcock Medical Center ("DHMC") as a physician in the Department of Obstetrics and Gynecology. I have been employed at DHMC since 2005. I am a specialist in maternal-fetal medicine, which focuses on patients with high-risk pregnancies.
2. I worked with Dr. Misty Blanchette Porter from 2005 until Dr. Porter's termination in June 2017.
3. I also worked with Dr. Albert Hsu, who was hired into the REI division of the OB/GYN Department in 2014 or so.
4. I did not work much with Dr. David Seifer, although I was familiar enough to have an

impression of him. My office was close to his, so I could hear him on the phone with patients on a regular basis. I could also hear Dr. Hsu on the phone with patients. On a fairly regular basis, I heard both Dr. Hsu and Dr. Seifer say things to patients that didn't sound right, including seemingly incorrect advice.

5. My recollection is that Dr. Seifer was not employed at DHMC for very long. My overall impression was that he was not a strong clinician.
6. Dr. Porter is an outstanding physician. She has a broad range of skills, including the ability to perform complex surgery and read difficult ultrasounds. She was our go-to person for complex benign GYN surgeries, such as myomectomies (removal of uterine fibroids). Many general GYN surgery cases went to Dr. Porter.
7. I relied on Dr. Porter's expertise on a regular basis. As one example, I relied on Dr. Porter for help interpreting first-trimester ultrasounds, particularly when they were challenging, such as a pregnancy in an unusual location or a uterine anomaly. We all used Dr. Porter a lot for first trimester ultrasounds, for a second set of eyes on anything that didn't look textbook normal. For example, Dr. Porter was excellent at interpreting uterine anomalies, which can affect pregnancy.
8. Since Dr. Porter's termination, no one else in the OB/GYN Department has been able to replace her ultrasound skills. It has been a big loss for the department.
9. In my judgment, Dr. Hsu was not qualified for his position in the REI Division. He was friendly but he lacked the basic skills of a physician. It was as if he was a first-year resident rather than an attending physician who had completed a fellowship in REI.
10. After DHMC announced the closure of the REI Division, I attended a meeting with Dr. Merrens and the members of the OB/GYN Department. The meeting was held to address

the closure of the REI Division. The meeting was held in Auditorium A and B. Dr. Merrens led the meeting. Dr. Merrens said that the REI Division was closed due to problems recruiting adequate nursing staff for the division. He then began discussing personnel and the termination of three physicians in conjunction with the closure. When he began discussing personnel, I raised my hand (I was seated towards the front) and asked Dr. Merrens why Dr. Porter had been terminated. I said something like, "I can understand why the other two needed to leave, but why Misty?" Dr. Merrens responded by saying that Misty was "on disability." I specifically recall him using the word "disability" in his response, because I was so shocked that he said that. I said something like, "but she was coming back," and Dr. Merrens moved on to a different subject.

11. Other members of the department were at the meeting. Elizabeth Todd, a nurse practitioner from the REI Division, was there, and I recall seeing her start to cry when I brought up the topic of Dr. Porter. Elizabeth Todd worked in the REI Division for many years and was not terminated when the division was closed.

12. The impact on the OB/GYN Department of losing Dr. Porter has been tremendous. Dr. Porter was able to provide REI consults for patients in other divisions. She was also outstanding at adolescent gynecology, which no one else in the Department specializes in. No one has been able to replace Dr. Porter's surgical skills for complex gynecological surgery. While other physicians can do the surgery, it is not at the same level, plus we now have one fewer physician to handle these cases. One way to track skill level in surgery is by looking at complication rates from the surgery. Dr. Porter's complication rates were always very low.

13. I was aware of the nursing problems in the REI Division, but the problems seemed

solvable. Many areas of DHMC have nursing shortages and the problems in the REI Division did not seem different from what I observed in other areas. I was aware that Sharon Parent wanted to continue working on a part-time basis after her retirement, but DHMC did not allow it. I don't understand why DHMC did not allow Sharon to return on a part-time basis, as this would have helped to solve the nursing shortage. In my opinion, the nursing problems in the REI Division were solvable.

14. I can recall a case in which Dr. Hsu provided substandard care to a patient, which resulted directly in the patient losing her pregnancy at 26 weeks. Dr. Hsu failed to notice the medical history of the patient, which included a history of thyroid cancer and a family history of thyroid cancer. The standard of care is to send a patient with this history to a maternal-fetal medicine specialist – like me – before beginning fertility treatments. A history of thyroid cancer points to certain specific elevated risk factors during pregnancy, and, in fact, the patient had a particular condition that resulted in complications during pregnancy. Thyroid function is an endocrine issue, and “REI” stands for reproductive endocrinology and infertility, so it's generally within the scope of an REI physician's understanding. The patient's condition would have been treatable pre-pregnancy, although it unfortunately was not diagnosed until after the baby was delivered pre-term and did not survive. Dr. Hsu failed to connect the dots with this patient's medical history, and he failed to bring in a specialist for a consult before getting the patient pregnant. Tragically, the patient delivered the baby at 26 weeks as a result of the untreated condition and the baby did not survive. If Dr. Hsu had been able to connect the dots between the patient's medical history and the need for a consult, this tragedy could have been avoided. I have seen a lot of difficult situations in my work but this one has

really stayed with me as an avoidable tragedy.

15. In all my years of practice, I have never heard of a hospital shutting down a division, like what DHMC did to the REI Division. When I was in medical school (not at Dartmouth), some groups of physicians left various groups, which required restructuring. Even then, the divisions were not shut down. In an academic setting like DHMC, it's even more important not to shut down a division, since it compromises the training of residents.
16. I have worked with many physicians, residents, and fellows during my career, and Dr. Seifer and Dr. Hsu were outliers in terms of clinical deficiencies. Dr. Hsu didn't have necessary skill level, and the additional training he received

from Dr. Porter did not seem to improve his abilities. When I sent consults to Dr. Seifer, his consults were not at the level of other REIs that I have worked with, despite his many years of experience. He certainly did not have the competency needed to be a division director.

17. The nursing staff found it incredibly difficult to work with Dr. Seifer and Dr. Hsu. My office was close to the REI ultrasound rooms so I interacted with the REI staff on a regular basis.
18. I heard from residents that they were anxious about going into surgery with Dr. Hsu. I am aware of at least one situation when Dr. Porter was called into the OR to fix a series of problems that occurred when Dr. Hsu was operating.
19. Dr. Porter did a lot of work that was related to fertility preservation that went beyond the scope of an IVF practice. For example, she knew how to provide treatment to pediatric or adolescent patients to preserve fertility, such as in the case of a vaginal septum or uterine anomaly that required treatment or surgery. Fertility preservation is an important area of medical care for OB/GYN patients, regardless of whether DH scaled back its IVF program or temporarily paused the IVF services.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 5th day of March, 2020 at Norwich,
Vermont



Michelle Russell, M.D.